

**NON-QUALIFIED STOCK OPTION AGREEMENT**  
**AMERICA ONLINE, INC.**  
(Brewster Kahle)

AGREEMENT made this 23rd day of May, 1995, between AMERICA ONLINE, INC. (the "Company"), a Delaware corporation having a principal place of business in Vienna, Virginia and Brewster Kahle (the "Participant").

**WHEREAS**, the Company desires to grant to the Participant an Option to purchase shares of its common stock, \$.01 par value (the "Shares") under and for the purposes of the 1992 Employee, Director and Consultant Stock Option Plan of the Company (the "Plan");

**WHEREAS**, the Option is granted to the Participant as contemplated by Section 6.4 of that certain Agreement and Plan of Reorganization, dated as of May 12, 1995, among the Company, AOL Acquisition Corp., a California corporation and a wholly owned subsidiary of the Company, and Wide Area Information Servers, Inc., a California corporation;

**WHEREAS**, the Company and the Participant understand and agree that any terms used and not defined herein have the same meanings as in the Plan;

**WHEREAS**, the Company and the Participant each intend that the Option granted herein shall be a Non-Qualified Stock Option.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the parties hereto agree as follows:

**1. GRANT OF OPTION.**

The Company hereby irrevocably grants to the Participant the right and option to purchase all or any part of an aggregate of 93,959 Shares, on the terms and conditions and subject to all the limitations set forth herein and in the Plan, which is incorporated herein by reference. The Participant acknowledges receipt of a copy of the Plan.

**2. PURCHASE PRICE.**

The purchase price of the Shares covered by the Option shall be an aggregate of \$3,499,972.75, or \$37.25 per Share, subject to adjustment, as provided in the Plan, in the event of a stock split, reverse stock split or other events affecting the holders of Shares. Payment shall be made in accordance with Paragraph 7 of the Plan.

### 3. EXERCISE OF OPTION.

Subject to the terms and conditions set forth in this Agreement and the Plan, the Option granted hereby shall be exercisable as follows:

On the second anniversary of the date of this Agreement	up to 1/2 of the Shares
On the third anniversary of the date of this Agreement	an additional 1/4 of the Shares
On the fourth anniversary of the date of this Agreement	an additional 1/4 of the Shares

The foregoing rights are cumulative and are subject to the other terms and conditions of this Agreement and the Plan.

Should the Company (i) merge or consolidate with another corporation under circumstances where the Company is not the surviving corporation, (ii) sell all or substantially all of its assets, (iii) liquidate or dissolve, or (iv) register the transfer of eighty percent (80%) or more of its outstanding Common Stock to persons who were not owners (or considered to be owners pursuant to Section 318 of the Code) of Common Stock immediately prior to such transfer, and the Participant continues his/her employment with the Company, or its successor, for a period of not less than twelve (12) months from the date of the merger, sale or transfer then 100% of such Option not yet vested shall vest at the end of such 12-month term, and the holder of this Option shall have the right to exercise any and all of the Option shares, unless this Option has otherwise expired or been terminated pursuant to its terms or the terms hereof.

At any time after the Company is involved in a merger, consolidation, sale or transfer as described above, and

- a) the Participant shall fail to be vested with power and authority analogous to the Participant's title and/or office prior to the merger, consolidation, sale or transfer, or
- b) the Participant shall lose any significant duties or responsibilities attending such office, or
- c) if there shall occur a reduction in the Participant's base compensation, or
- d) the Participant's employment with the Company, or its successor, is terminated without cause, then 100% of such option not yet vested shall immediately vest and the holder of this Option shall have the right, immediately prior to the effectiveness of consummation of such event, to exercise any and all of the

Option shares, unless this option has otherwise expired or been terminated pursuant to its terms or the terms hereof.

#### 4. TERM OF OPTION.

The Option shall terminate ten (10) years from the date of this Agreement, but shall be subject to earlier termination as provided herein or in the Plan.

If the Participant ceases to be an employee, director or consultant of the Company or of an Affiliate (for any reason other than death or Disability or termination for "cause" as defined in the Plan), the Option may be exercised within ninety (90) days after the date the Participant ceases to be an employee, director or consultant of the Company or an Affiliate, or within the originally prescribed term of the Option, whichever is earlier, but may not be exercised thereafter. In such event, the Option shall be exercisable only to the extent that the right to purchase Shares under this Agreement or the Plan has accrued and is in effect at the date of such cessation of employment, consultancy or directorship. The provisions of this paragraph shall apply if the Participant subsequently becomes disabled or dies after ceasing to be an employee, consultant or director, provided, however, in the case of the Participant's death within three (3) months after ceasing to be an employee, consultant or director, the Option may be exercised by the Participant's Survivors within one (1) year after the date of the Participant's death but in no event after the date of expiration of the term of the Option.

In the event the Participant's employment, directorship or consultancy is terminated for "cause" (as defined in the Plan), the Participant's right to exercise any unexercised portion of this Option shall cease forthwith, and this Option shall thereupon terminate. Notwithstanding anything herein to the contrary, if subsequent to the Participant's termination as an employee, director or consultant but prior to the exercise of the Option, the Board of Directors of the Company determines that, either prior or subsequent to the Participant's termination, the Participant engaged in conduct which would constitute "cause," then the Participant shall forthwith cease to have any right to exercise the Option.

In the event of the Disability of the Participant, as determined in accordance with the Plan, the Option shall be exercisable within one (1) year after the date of such Disability or, if earlier, the term originally prescribed by the Option. In such event, the Option shall be exercisable:

- a) to the extent that the right to purchase the Shares hereunder has accrued on the date the Participant becomes Disabled and is in effect as of the date of Disability; and
- b) in the event rights to exercise the Option accrue periodically, to the extent of a pro rata portion of any additional rights as would have accrued had the Participant not become Disabled prior to the end of the particular year. The

proration shall be based upon the number of days of the accrual period during which the Participant was not Disabled.

In the event of the death of the Participant while an employee, consultant or director of the Company or of an Affiliate, the Option:

- x) to the extent exercisable but not exercised as of the date of death; and
- y) in the event rights to exercise the Option accrue periodically, to the extent of a pro rata portion of any additional rights to exercise the Option as would have accrued had the Participant not died during that year;

may be exercised by the Participant's Survivors. The proration shall be based upon the number of days during the accrual period prior to the Participant's death. In such event, the Option must be exercised, if at all, within one (1) year after the date of death of the Participant or, if earlier, within the originally prescribed term of the Option.

#### **5. METHOD OF EXERCISING OPTION.**

Subject to the terms and conditions of this Agreement, the Option may be exercised by written notice to the Company, at the principal executive office of the Company. Such notice shall state the election to exercise the Option and the number of Shares in respect of which it is being exercised, shall be signed by the person or persons so exercising the Option, and shall be in substantially the form attached hereto as Exhibit A. Payment of the full purchase price for such Shares shall be made in accordance with Paragraph 7 of the Plan, and the Company shall deliver a certificate or certificates representing such Shares as soon as practicable after the notice shall be received, provided, however, that the Company may delay issuance of such Shares until completion of any action or obtaining of any consent, which the Company deems necessary under any applicable law (including, without limitation, state securities or "blue sky" laws). The certificate or certificates for the Shares as to which the Option shall have been so exercised shall be registered in the name of the person or persons so exercising the Option (or, if the Option shall be exercised by the Participant and if the Participant shall so request in the notice exercising the Option, shall be registered in the name of the Participant and another person jointly, with right of survivorship) and shall be delivered as provided above to or upon the written order of the person or persons exercising the Option. In the event the Option shall be exercised, pursuant to Section 4 hereof, by any person or persons other than the Participant, such notice shall be accompanied by appropriate proof of the right of such person or persons to exercise the Option. All Shares that shall be purchased upon the exercise of the Option as provided herein shall be fully paid and non-assessable.

## **6. PARTIAL EXERCISE.**

Exercise of this Option to the extent above stated may be made in part at any time and from time-to-time within the above limits, except that no fractional share shall be issued pursuant to this Option.

## **7. NON-ASSIGNABILITY.**

The Option shall not be transferable by the Participant otherwise than by will or by the laws of descent and distribution and shall be exercisable, during the Participant's lifetime, only by the Participant. Except as provided in the preceding sentence, the Option shall not be assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and shall not be subject to execution, attachment or similar process. Any attempted transfer, assignment, pledge, hypothecation or other disposition of the Option or of any rights granted hereunder contrary to the provisions of this Section 7, or the levy of any attachment or similar process upon the Option or such rights, shall be null and void.

## **8. NO RIGHTS AS STOCKHOLDER UNTIL EXERCISE.**

The Participant shall have no rights as a stockholder with respect to Shares subject to this Agreement until a stock certificate therefore has been issued to the Participant and is fully paid for. Except as is expressly provided in the Plan with respect to certain changes in the capitalization of the Company, no adjustment shall be made for dividends or similar rights for which the record date is prior to the date such stock certificate is issued.

## **9. CAPITAL CHANGES AND BUSINESS SUCCESSIONS.**

The Plan contains provisions covering the treatment of Options in a number of contingencies such as stock splits and mergers. Provisions in the Plan for adjustment with respect to stock subject to Options and the related provisions with respect to successors to the business of the Company are hereby made applicable hereunder and are incorporated herein by reference.

## **10. TAXES AND WITHHOLDING.**

The Participant acknowledges that upon exercise of the Option the Participant will be deemed to have taxable income measured by the difference between the then fair market value of the Shares received upon exercise and the price paid for such Shares pursuant to this Agreement (the "Taxable Income"). The Participant acknowledges that any income or other taxes due from him or her with respect to this Option or the Shares issuable pursuant to this Option shall be the Participant's responsibility.

If the Company in its discretion determines that it is obligated to withhold income taxes with respect to the exercise of the Option, the Participant hereby agrees that the

Company may withhold from the Participant remuneration, if any, the appropriate amount of federal, state and local withholding attributable to such amount that is considered compensation includible in such person's gross income.

#### **11. PURCHASE FOR INVESTMENT.**

Unless the offering and sale of the Shares to be issued upon the particular exercise of the Option shall have been effectively registered under the Securities Act of 1933, as now in force or hereafter amended (the "Act"), the Company shall be under no obligation to issue the Shares covered by such exercise unless and until the following conditions have been fulfilled:

- a) The person(s) who exercise the Option shall warrant to the Company, at the time of such exercise, that such person(s) are acquiring such Shares for their own respective accounts, for investment, and not with a view to, or for sale in connection with, the distribution of any such Shares, in which event the person(s) acquiring such Shares shall be bound by the provisions of the following legend which shall be endorsed upon the certificate(s) evidencing their Option Shares issued pursuant to such exercise:

"The shares represented by this certificate have been taken for investment and they may not be sold or otherwise transferred by any person, including a pledgee, unless (1) either (a) a Registration Statement with respect to such shares shall be effective under the Securities Act of 1933, as amended, or (b) the Company shall have received an opinion of counsel satisfactory to it that an exemption from registration under such Act is then available, and (2) there shall have been compliance with all applicable state securities laws; and

- b) If the Company so requires, the Company shall have received an opinion of its counsel that the Shares may be issued upon such particular exercise in compliance with the Act without registration thereunder. Without limiting the generality of the foregoing, the Company may delay issuance of the Shares until completion of any action or obtaining of any consent, which the Company deems necessary under any applicable law (including without limitation state securities or "blue sky" laws).

#### **12. NO OBLIGATION TO EMPLOY.**

The Company is not by the Plan or this Option or any other agreement obligated to continue the Participant as an employee, consultant or director of the Company.

**13. NOTICES.**

Any notices required or permitted by the terms of this Agreement or the Plan shall be given by recognized courier service, facsimile, registered or certified mail, return receipt requested, addressed as follows:

To the Company: AMERICA ONLINE, INC.  
8619 Westwood Center Drive  
Vienna, Virginia 22182

To the Participant: Brewster Kahle  
690 Fifth Street  
San Francisco, California 94107

or to such other address or addresses of which notice in the same manner has previously been given. Any such notice shall be deemed to have been given when mailed in accordance with the foregoing provisions.

**14. GOVERNING LAW.**

This Agreement shall be construed and enforced in accordance with the law of the State of Delaware.

**15. BENEFIT OF AGREEMENT.**

Subject to the provisions of the Plan and the other provisions hereof, this Agreement shall be for the benefit of and shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

**16. ENTIRE AGREEMENT.**

This Agreement, together with the Plan, embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement not expressly set forth in this Agreement shall affect or be used to interpret, change or restrict, the express terms and provisions of this Agreement, provided, however, in any event, this Agreement shall be subject to and governed by the Plan.

**17. MODIFICATIONS AND AMENDMENTS.**

The terms and provisions of this Agreement may be modified or amended only by written agreement executed by all parties hereto.

**18. WAIVERS AND CONSENTS.**

The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

**19. HOLDING PERIOD APPLICABLE TO PERSONS SUBJECT TO SECTION 16 OF THE SECURITIES EXCHANGE ACT OF 1934.**


If the Participant to whom the Option has been granted pursuant to this Agreement is subject to Section 16 of the Securities Exchange Act of 1934, then at least six (6) months must elapse from the date of grant of the Option to the date of disposition of the Shares.

**20. COUNTERPARTS.**

This Agreement may be executed in any number of counterparts, each of which will be an original as regards any party whose signature appears thereon and all of which together will constitute one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, will bear the signatures of both parties reflected hereon as signatories. Facsimile copies of such counterparts are acceptable

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by a duly authorized officer, and the Participant has hereunto set his or her hand and seal, all as of the day and year first above written.

AMERICA ONLINE, INC.

  
\_\_\_\_\_  
Brewster Kahle


By:   
\_\_\_\_\_  
Lennert J. Leader



Exhibit A

**NOTICE OF EXERCISE OF NON-QUALIFIED STOCK OPTION**

To: AMERICA ONLINE, INC.

**IMPORTANT NOTICE:** This form of Notice of Exercise may only be used at such time as the Company has filed a Registration Statement with the Securities and Exchange Commission under which the issuance of the Shares for which this exercise is being made are registered and such Registration Statement remains effective.

Ladies and Gentlemen:

I hereby exercise my Non-qualified Stock Option to purchase \_\_\_\_\_ shares (the "Shares") of the common stock, \$.01 par value, of AMERICA ONLINE, INC. (the "Company"), at the exercise price of \$37.25 per share, pursuant to and subject to the terms of that certain Non-qualified Stock Option Agreement between the undersigned and the Company dated May 23, 1995.

I understand the nature of the investment I am making and the financial risks thereof. I am aware that it is my responsibility to have consulted with competent tax and legal advisors about the relevant national, state and local income tax and securities laws affecting the exercise of the Option and the purchase and subsequent sale of the Shares.

I am paying the option exercise price for the Shares as follows: \_\_\_\_\_

\_\_\_\_\_  
If I am subject to Section 16 of the Securities Exchange Act of 1934, I understand that at least six (6) months must elapse from the date of grant of the Option to the date of disposition of the Shares.

Please issue the stock certificate for the Shares (check one):

\_\_\_\_\_ to me

\_\_\_\_\_ to me and \_\_\_\_\_ as joint tenants with  
right of survivorship

and mail the certificate to me at the following address:

\_\_\_\_\_  
\_\_\_\_\_

My mailing address, if different from the address listed above, for shareholder communications is:

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Very truly yours,

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Participant (signature)

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Print Name

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Date

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Social Security Number